

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

PERCY E. FLUID,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

CV 12-65-M-DLC-JCL

ORDER

In this case, which Plaintiff Percy E. Fluid brought under 42 U.S.C. § 405(g) seeking judicial review of the decision of the Commissioner of Social Security, there are two pending motions for summary judgment. Plaintiff filed his motion (doc. 17) on December 28, 2012, and Defendant filed his motion (doc. 22) on February 26, 2013. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations on March 20, 2013. The parties did not file objections and so have waived the right to de novo review. 28 U.S.C. § 636(b)(1). The Findings and Recommendations are instead reviewed for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch recommended that Fluid’s motion be denied and the Commissioner’s motion be granted. Further he recommended that the Commissioner’s decision be affirmed. Judge Lynch addressed the five-step sequential evaluation process followed by the Commissioner to determine whether a claimant is disabled. At the outset, Judge Lynch stated the standard of review for a decision of the Commissioner of Social Security is limited by this Court. He concluded that the Administrative Law Judge’s decision was based on substantial evidence and free of legal error. There is no clear error in his findings or recommendations.

IT IS ORDERED:

1. Judge Lynch’s Findings and Recommendation (doc. 25) are adopted in full.

2. The motion for summary judgment by Fluid (doc. 17) is DENIED and the motion for summary judgment by the Commissioner (doc. 22) is GRANTED.

3. The Commissioner’s decision is AFFIRMED.

DATED this 15th day of April 2013.

A handwritten signature in blue ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large initial "D".

Dana L. Christensen, Chief District Judge
United States District Court